IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 815 of 1979
In
CROSS OBJECTION (STAMP NUMBER) No. 17476 of 1979

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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UNITED INDIA FIRE & GENERAL INSURANCE CO.LTD. - Appellant(s)
Versus
RAJGOR LILABEN MOHANLAL JOSHI WD/O MOHANLAL V. RAJGOR & 6 - Defendant(s)

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Appearance :
MR MI PATEL for Appellant(s) : 1,
MR RJ OZA for Defendant(s) : 1 - 4.
MR PM THAKKAR for Defendant(s) : 1 - 4.
MS RAJUL MEHTA for MR BM MANGUKIYA for Defendant(s) : 5 - 7.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/08/2006

ORAL JUDGMENT

1. By way of this appeal the appellant has challenged the judgement and award dated 20.02.1979 passed by the Motor Accident Claims Tribunal, Bhavnagar, in M.A.C.P. No. 43 of 1978 whereby a sum of Rs. 49,260/- was awarded by way of compensation.

2. The facts of the case are that on 25.02.1978 at 6-45 a.m. Deceased Police Constable Mohanlal Valijibhai Joshi was on duty. He and Valjibhai were going on a cycle to village Rangpur from Ratanpur on

Italiya road. They were going for the purpose of investigation of an offence. Near Italiya bus stand they were standing and were talking with Bhadursinh Ramsinh and Thakarshi Patel. At that time Mohanlal went on the road at a distance of 10 to 12 feet and at that time truck dashed with Mohanbhai he fell down and his body went under the truck in between the two front wheels. He was found bleeding from his ears and was unconscious. Thereafter Valjibhai as well as Mohanbhai were removed to hospital and Doctor declared Mohanbhai to be dead. Therefore the legal heirs of the deceased field a claim petition sum of Rs. 1,00,000/- by way of compensation. Tribunal after hearing the parties passed the aforesaid order.

3. Learned advocate for the appellant has submitted that so far as the vehicle in this case was concerned, it being a “goods vehicle” and no permit to carry passengers under any circumstances.

4. learned Advocate has placed reliance on a decision of the Apex Court in the case of ***“National Insurance Company Ltd. Vs. Kusum Rai & Others”***

reported in (2006) 4 SCC 250 wherein at Para-14, the Apex Court has observed as under,

> "**14.** This Court in *Swaran Singh* clearly laid down that the liability of the Insurance Company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-a-vis the driver being not possessed of a valid licence was considered in *Swaran Singh* stating:(SCC pp.336-37, para 89)
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> "*89.* **Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive.** Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section(2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are:(a) motorcycle without gear, (b) motorcycle with gear, © invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section(2) of Section 10. they are 'goods carriage', 'heavy goods vehicle', 'heavy passenger motor vehicle', invalid carriage', 'light motor vehicle', 'maxi-cab', 'medium goods vehicle', 'medium passenger motor vehicle', 'motor-cab', 'motorcycle', 'omnibus', 'private service vehicle', 'semi-trailer', 'tourist vehicle',

> 'tractor', trailer and 'transport vehicle'. In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for 'motorcycle without gear' , [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for 'light motor vehicle' is found to be driving a 'maxi-cab', 'motor-cab' or 'omnibus' for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."

5. The Apex Court has clearly laid down in the case of Shankarayya Vs. United India Insurance Company Limited, reported in AIR 1998 SC 2968 that the order passed by the Tribunal under section 170 must be an order in writing and it must disclose the reasons for granting permission to the insurer to take up defences available to the owner an driver. If these conditions are not satisfied by the order actually passed by the Tribunal, the said order would be of no effect. The aforesaid principle has been followed by this Court in the case of New India Assurance Co. Vs. A.B. Dave, reported in 2006(2) GLR 1362 wherein

it is held that the Insurance Company is not entitled to contest proceedings on merit in absence of reasoned order in writing from M.A.C. Tribunal.

6. No grounds based on statutory defences available to the insurer under section 149(2) of the Act were pleaded or urged before the tribunal.

7. In the premises aforesaid, the appeal is not maintainable. Therefore, I find that there is no substance in the present appeal. Accordingly the present appeal is dismissed with no order as to costs. The cross objection filed by the claimant is also rejected.

(K.S.JHAVERI, J.)

Suresh*